

Rule 4:04. Clients' Security Board and Fund

Section 1. ~~A~~The full court shall appoint a Clients' Security Board (Board) ~~shall be appointed by the full court.~~ This Board shall consist of seven members of the Massachusetts bar to serve as public trustees to receive, hold, manage, and distribute the funds allocated to the Board from the annual fees assessed under ~~subsection (1) of Rule 4:03. Such~~(1)(a). The Board shall hold such funds ~~shall be held by the Board~~ in trust ~~and known~~ as the Clients' Security Fund (Fund). The purpose of the Fund is to discharge, as far as practicable and in a reasonable manner, the collective professional responsibility of the members of the Massachusetts bar ~~with respect to~~for actual losses caused ~~to by~~ the ~~public by defalcation~~theft of ~~members of the bar~~client funds or property by attorneys, acting either as attorneys or as fiduciaries (except to the extent to which ~~they are bonded, or to the extent~~ such losses are otherwise ~~covered~~reimbursed).

Section 2.

(1)

(A) The Massachusetts Bar Association, each county bar association (including the Boston Bar Association as the county bar association for Suffolk County) and other appropriate organizations may submit to the full court not more than three nominees for each vacancy on the Board. The full court shall select from these nominees or from any other members of the bar a person to fill each vacancy, and shall designate a Chairman, Chair and a Vice Chairman, Chair to act in the absence ~~for any cause~~ of the Chairman, Chair.

(2) ~~When the Board is first selected, one member shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years. When the sixth and seventh members of the Board are first selected, one member shall be appointed for a term of four years and one for a term of five years. All terms (except to fill an unexpired term) thereafter shall be for five years and no member shall succeed himself after~~

(B) All terms (except to fill an unexpired term) shall be for five years. No member shall serve more than two consecutive full terms, in addition to any term of less than five years, either by original appointment or to complete an unexpired term. ~~He~~A member shall be eligible, however, for reappointment for further terms after a lapse of one or more years. A member whose term has expired shall continue in office until the full court appoints a successor ~~is appointed~~.

Section 3. ~~Meetings of the Board shall be held at the call of the Chairman~~The Chair or a majority of the members, ~~and may call meetings of the Board. The Board shall be held~~meet at least ~~once each year~~quarterly, upon reasonable notice. ~~Four to the Board members. A majority of~~ members shall constitute a quorum. A majority of the members present at a duly constituted meeting may exercise any powers held by the Board.

Section 4. The Board, members of the Board, and the staff of the Board shall be immune from liability for any conduct in the course of their official duties.

Rule 4:05. Claims by Clients ~~for Reimbursement of Losses~~

Section 1. The Board may consider ~~applications by clients~~a client's claim for reimbursement of losses ~~discovered after the effective date caused by an attorney who had been a member of these rules, the~~ Massachusetts bar and ~~may honor, pay~~who has been disbarred, suspended, has resigned from the bar, or ~~reje~~ethas died. The Board may allow or deny such claims in whole or in part to the extent that funds are

available and in accordance with ~~such~~ applicable rules, ~~regulations~~, and principles ~~as may be in force from time to time~~, especially the provisions of this Chapter Four.

Section 2. All reimbursements shall be a matter of grace, not right, and no client, beneficiary, employer, organization, or other person shall have any right or interest in the Fund. No decision to ~~grant~~ allow or deny reimbursement shall be subject to judicial review in a court of either appellate or original jurisdiction.

~~**Section 2.** No application for reimbursement from the Fund shall be allowed unless the attorney of the client applicant (1) was, at the time the claim arose, a member of the Massachusetts bar with an office within the Commonwealth and engaged in active practice, and (2) shall have died, or have been disbarred or suspended from the practice of law, or have resigned from the Massachusetts bar.~~

Section 3. ~~The Board, in determining in~~ In exercising its discretion whether to allow any application claim for reimbursement from the Fund ~~shall be allowed,~~ the Board shall attempt ~~in the public interest~~ to establish fair, reasonable, and consistent principles for the allowance and ~~rejection~~ denial of claims ~~in the circumstances existing from time to time, and shall consider. To the extent possible, the Board shall attempt to fully reimburse claimants for their actual losses consistent with the Board's role as public trustee of the Fund and considering the following matters and other factors together with such other circumstances as the Board may deem appropriate and relevant:~~

~~(1)~~

(A) The amounts available and likely to become available to the Fund for payment of claims; ~~the~~

(B) ~~The~~ size and number of claims likely to be presented in the future; ~~the total amount of losses caused by defalcations of any one attorney or associated groups of attorneys; and the unreimbursed amounts of claims theretofore recognized by the Board as meriting reimbursement but for which complete reimbursement has not been made.~~

~~(2)~~ (C) The amount of the claimant's loss as compared with the amount of the ~~then known~~ losses sustained by other ~~applicants~~ claimants who may merit reimbursement from the Fund; ~~the~~

(D) ~~The unreimbursed amounts of claims recognized by the Board as meriting reimbursement but for which complete reimbursement has not been made;~~

(E) ~~The~~ degree of hardship suffered by the claimant as compared with that suffered by other ~~applicants~~ claimants; and ~~any~~

(F) Any negligence or conduct of the claimant ~~which~~ that may have contributed to the loss.

Section 4. ~~In addition to other conditions and requirements, the~~ The Board may require any ~~applicant~~ claimant, as a condition of any payment from the Fund, to execute such instruments, to take such action, and to enter into such agreements as the Board may direct, including assignments, subrogation agreements, trust agreements, and promises to cooperate with the Board in making and prosecuting claims or charges against any person. ~~The Board may request individual lawyers and bar associations to assist it in the investigation of claims.~~

Section 5. ~~At any stage of its investigation, the~~ The Board may issue a subpoena requiring the attendance and testimony of a witness, including the ~~respondent, and the production of any evidence, including~~

~~books, records, correspondence or documents, relating to any matter in question in the investigation. The subpoena shall require a witness disbarred or suspended attorney, to appear before the Board or its counsel at a specified date and time ~~and~~. The subpoena shall specify any evidence ~~to be produced~~. Testimony may be taken relating to the Board investigation that the witness shall produce to the Board, including but not limited to books, records, correspondence, or documents. The Board may record testimony electronically or otherwise. The Board shall use the recording for its own administrative purposes.~~

Section 6. ~~The Board may issue a subpoena requiring the attendance and testimony of a witness, and the production of any evidence, including books, records, correspondence or documents, relating to any matter in question in the proceeding. Any request by the respondent for such a subpoena shall be made in writing to the Board which may forthwith issue the subpoena. The subpoena shall require a witness to appear before the Board at a specified date and time and shall specify the evidence, if any, to be produced. The Board shall keep confidential all claim forms, proceedings, investigations, claimants' and respondents' financial information, and reports involving specific claims received and payments made from the Fund. The Board and its staff shall maintain the confidentiality of the claim forms, investigations, and proceedings. This provision shall not be construed to:~~

(A) deny relevant information to the Board of Bar Overseers, to a court or investigative agency of proper jurisdiction, to an authorized agency investigating the qualifications of a judicial candidate, or applicant for governmental employment;

(B) prohibit the release of statistical or summary information that does not disclose the identity of the parties; or

(C) prohibit the release of publicity in a manner that is consistent with the provisions of this section.

Rule 4:06. Miscellaneous Powers and Duties of Clients' Security Board

Section 1. ~~—~~ In addition to other powers the Board, ~~in order to carry out its functions and duties,~~ ~~(1)~~ may:

(A) adopt, with the approval of this court, rules ~~and regulations not inconsistent that are consistent~~ with these rules;

~~(2) may~~ B enforce, in its discretion, claims for restitution arising by subrogation, assignment, or otherwise;

~~(3) may~~ C invest or direct the investment of the Fund, or any portion thereof, in such investments as the Board may deem appropriate, and may cause funds to be deposited in any bank, banking institution, savings bank, or federally insured savings and loan association in this Commonwealth provided, however, that the Board shall have no obligation to cause the Fund or any portion thereof to be invested ~~and may delegate some or all of its duties under this subsection (3) to the Administrator of the Board of Bar Overseers;~~

~~(4) may~~ D employ and compensate consultants, agents, legal counsel, and employees, ~~and, subject to the prior written approval of this court or a justice thereof, may make;~~

(E) enter into contracts for ~~the performance of administrative goods~~ and ~~similar services, as are necessary for obtaining~~ the Board to carry out its duties;

(F) obtain surety bond or insurance coverage useful or appropriate in providing ~~protection~~ protections to clients of attorneys, ~~and for other goods and services appropriate in the performance of the Board's duties and may;~~

(G) assign for administrative purposes its duties under ~~subsection (4)~~ subsections (D) and (E) to the ~~Administrator~~ Executive Director of the Board of Bar Overseers, in accordance with the Board's written directions, which ~~may be amended by~~ the Board may amend or rescind at any time;

~~(5) may~~ H sue in the name of the Board without joining any or all of its individual members; and

~~(6) may~~ I perform other acts necessary or proper for the efficient administration of the Fund.

Section 2. ~~Money~~ The Board shall ~~be disbursed~~ authorize disbursement of money from the Fund ~~Only upon only after issuing a~~ written order ~~issued by action of the Board~~ pursuant to this Chapter Four.

Section 3. At least once each year, and at such additional times as the court may order, the Board shall file with this court a written report of its administration of the Fund. The written report shall include a list of any material written contracts into which the Board entered, including the name of the contracting party, the amount of the contract, the beginning and end date of the contract, and the scope of work to be accomplished.

Section 4. The Board shall annually, and at such other times as this court may direct, ~~shall~~ obtain an independent audit by a certified public accountant of funds received and paid out ~~by it~~ in connection with the administration of the Fund. The Fund shall pay the cost of any such audit ~~shall~~.

Rule 4:07 Lawyers Concerned for Lawyers Fund and Oversight Committee

Section 1. Lawyers Concerned for Lawyers, Inc. (LCL) provides programs to assist lawyers, judges, other legal professionals and law students who may be impaired in their ability to function as a result of the disease of addiction, including but not limited to alcoholism or other chemical dependency. In addition, LCL provides assessment and referral services with respect to other psychological, emotional and physical impairments that might interfere with an individual's capacity to function as a lawyer. The Board shall bill and collect the portion of the annual registration fee designated by the court for LCL to provide funds for the operation of the lawyers assistance programs and, upon receipt, shall hold the funds collected in trust as a separate fund for LCL. The court shall appoint an LCL Oversight Committee (hereinafter the Committee) to oversee the appropriate use of the fund so set apart for the operation of LCL. The court shall appoint to the Committee a representative from LCL, a present or former member of the Board of Bar Overseers, a present or former member of the Clients' Security Board, and three or more members of the Massachusetts bar.

Section 2.

(1) The Committee, as initially constituted, shall consist of such members as the court may determine, to be selected by the court as soon as reasonably practicable after the adoption of this rule. Thereafter the court, by order, shall request the submission of nominations to fill vacancies in such manner as it may determine. LCL, the Board of Bar Overseers, the Clients' Security Board, the Massachusetts Bar Association, and each county bar association (including the Boston Bar Association as the bar association for Suffolk County) may nominate a person to fill a vacancy in the Committee. Any attorney may also submit in writing the names of nominees. The court may, but need not, make appointments to the Committee from the nominees so submitted. The court shall from time to time designate one member of the Committee as Chair and another as Vice Chair to act in the absence, for any cause, of the Chair.

(2) When the Committee is first selected, approximately one third of the members shall be appointed for a term of three years, one third for a term of two years, and one third for a term of one year. Subsequent appointments to the Committee shall be for a term of four years. No member shall be appointed to more than two consecutive full terms but (a) a member appointed for less than a full term (originally or to fill a vacancy) may serve two consecutive full terms in addition to such part of a full term, and (b) a former member shall again be eligible for appointment after a lapse of at least one year. The Committee shall act only with the concurrence of a majority of the members who are present provided, however, that a quorum shall be constituted of a majority of the Committee. A member whose term has expired shall continue in office until a successor is appointed.

Section 3.

(1) LCL shall annually, and at such additional times as the court may order, cause to be performed an independent audit of its books by a certified public accountant. Further, LCL shall annually, and at such additional times as the court may order, file with the court a written report of its operations. Copies of such audit and report will be furnished to the Committee.

(2) At least annually, LCL shall prepare and submit to the Committee for approval a budget of its financial requirements for the period covered by such budget. Upon approval of such budget, the Committee shall authorize in writing disbursement for such period from the funds held by the Board for LCL's account. Pursuant to such authority, disbursement shall be made at such times and in such manner as LCL may from time to time request of the Board in writing.

Section 4. Members of LCL and its staff shall be immune from liability for any good faith conduct in the course of their official duties.

Section 5. Pursuant to the provisions of Mass. R. Prof. C. 1.6(c) (Rule 3:07), a lawyer participating in an LCL program to provide lawyer assistance, as defined in Mass. R. Prof. C. 1.6(c), may require a person acting under the lawyer's supervision or control to sign a non disclosure form approved by the Supreme Judicial Court.

Rule 4:08. Interpretation of Chapter Four of These Rules

Section 1. _The Board of Bar Overseers or the ~~Clients'~~Clients' Security Board may request this court for an interpretation of any portion of this Chapter Four, and for advice and instructions as to their powers and duties. Either of these boards may submit to the court suggestions or proposals for revisions, modifications, or improvement of this Chapter Four, including proposals for affording protection to clients by surety bonds, group insurance of attorneys, or other means of insurance or indemnity coverage.

Section 2. _ Except where powers are expressly given to the full court, or the context indicates clearly that the full court alone is to have the power, the powers of this court may be exercised by a justice, subject to any appropriate review.

Rule 4:09. Amendment, Modification, Repeal

This court may amend, modify, or repeal this Chapter Four of these rules at any time without prior notice and, in its discretion, may provide for the dissolution and winding up of the ~~Clients' Security~~ Fund.